

## 70 Am. Jur. 2d Sheriffs, Police, and Constables Summary

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### [Correlation Table](#)

## Summary

### Scope:

This article discusses, in general, sheriffs, deputy sheriffs, police officers, constables, and other law enforcement officers. Specifically discussed are: eligibility and qualifications to hold such positions; manner of acquiring the title or right to the applicable offices or positions; acquisition of the title or right to the applicable office or position; appointment or election; filling of vacancies; duration and termination of the applicable office or position; powers and duties of such officers; compensation; liability, both civil and criminal; liability of sureties on official bonds; indemnity of officers and indemnity bonds; legal actions involving law enforcement officers; and practice and procedure related to legal actions involving law enforcement officers.

### Federal Aspects:

This article discusses the appointment, term of office, and powers of United States marshals and their deputies; the due process rights of an officer removed from office or otherwise disciplined; and the vicarious liability of an officer for actions of a deputy in violation of federal statutes.

### Treated Elsewhere:

Agreements not to prosecute, authority of law enforcement officers with regard to promises as to, see [Am. Jur. 2d, Criminal Law § 240](#)

Assault and battery, liability of police or other peace officer for, see [Am. Jur. 2d, Assault and Battery §§ 29, 56, 98, 110](#)

Attachment and garnishment, procedure and remedies in, see [Am. Jur. 2d, Attachment and Garnishment §§ 1 et seq.](#)

Civil rights laws ([42 U.S.C.A. § 1983](#)), police officers as acting under color of state law for purposes of bringing action for deprivation of federally secured right, see [Am. Jur. 2d, Civil Rights § 79](#)

Civil service laws, generally, see [Am. Jur. 2d, Civil Service §§ 1 et seq.](#)

Confinement of persons under civil or criminal process, including liability of governmental entities and custodians, and sheriff's duties as custodian of jail, see [Am. Jur. 2d, Penal and Correctional Institutions §§ 1 et seq.](#)

Contracts concerning enforcement of law and prosecution of crimes, see [Am. Jur. 2d, Contracts §§ 253 to 258](#)

Criminal and civil arrest, including the manner of, and procedure in, making arrests, as well as general aspects of liability incurred in connection with arrests, see [Am. Jur. 2d, Arrest §§ 1 et seq.](#)

Criminal conspiracy theory under which individual is guilty of conspiracy even though only other coconspirator is police agent who has no intention of committing crime, see [Am. Jur. 2d, Conspiracy §§ 16, 20, 26](#)

Early retirement annuity or credit of law enforcement officers, see [Am. Jur. 2d, Pensions and Retirement Funds §§ 982, 983, 1020](#)

Escape of prisoners, civil liability of sheriffs and other public officers for injury suffered as result of prisoner's escape or subsequent criminal conduct, see [Am. Jur. 2d, Escape § 26](#)

Evidence: admissibility of evidence as to resistance to arrest or flight or concealment prior to arrest, see [Am. Jur. 2d, Evidence §§ 542 to 546](#); effectiveness of exclusionary rule as deterring police misconduct, see [Am. Jur. 2d, Evidence § 601](#); notes taken by law enforcement officer pertaining to interview with a potential government witness as subject to production under Jencks Act, see [Am. Jur. 2d, Evidence § 1167](#); admissibility of police reports as business records, see [Am. Jur. 2d, Evidence § 1267](#); exception to hearsay rule for matters observed pursuant to duty imposed by law as to which matters there was duty to report as not applicable in criminal cases with respect to matters observed by police officers and other law enforcement personnel, see [Am. Jur. 2d, Evidence §§ 1303 to 1305](#); admissibility, in actions against municipal corporations for injuries resulting from alleged negligent operation of city police vehicles, of evidence of police department rules and regulations, see [Am. Jur. 2d, Municipal, County, School, and State Tort Liability § 201](#)

Execution, levy, execution sales, actions for wrongful execution, and enforcement of judgments, generally, see [Am. Jur. 2d, Executions and Enforcement of Judgments §§ 1 et seq.](#)

False arrest or imprisonment, generally, see [Am. Jur. 2d, False Imprisonment §§ 1 et seq.](#)

Fireman's rule, as applying to police officers so as to preclude recovery by officers injured on private premises on grounds of negligence, see [Am. Jur. 2d, Premises Liability §§ 428 to 430](#)

Motor vehicles: power of police officers to regulate, generally, see [Am. Jur. 2d, Automobiles and Highway Traffic § 24](#); effect of directions from traffic officers on civil liability arising from, see [Am. Jur. 2d, Automobiles and Highway Traffic §§ 802, 803](#)

Municipal, county, state, and other governmental bodies; liability stemming from crime prevention and control activities, and for acts of their law enforcement officers, see [Am. Jur. 2d, Municipal, School, and State Tort Liability §§ 378 to 428](#)

Municipal police department, control of, and regulation and rights of police officers, see [Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 102, 121, 186, 268](#)

Negligence, failure of custodian, including sheriff, to control dangerous persons as basis for imputing liability in, see [Am. Jur. 2d, Negligence § 1113](#)

Police identification materials and criminal records, rights as to, generally, see [Am. Jur. 2d, Criminal Law §§ 1190 to 1196](#)

Public officers, generally, see [Am. Jur. 2d, Public Officers and Employees §§ 1 et seq.](#)

Sale of property under order of court, see [Am. Jur. 2d, Judicial Sales §§ 1 et seq.](#)

Search and seizure, rights, duties, and liabilities with regard to, see [Am. Jur. 2d, Searches and Seizures §§ 1 et seq.](#)

Service, return, and proof of process, see [Am. Jur. 2d, Process §§ 1 et seq.](#)

Social Security coverage of police officers by agreement, as part of retirement systems for such officers, see [Am. Jur. 2d, Social Security and Medicare §§ 187 to 189](#)

Stopping automobile and detaining driver to check driver's license and registration, lawfulness of police officer's action in, see [Am. Jur. 2d, Automobiles and Highway Traffic § 106](#)

United States marshal: writ of execution issuing from federal court as executed by United States marshal, and effect or removal of marshal on succeeding marshal's powers, see [Am. Jur. 2d, Executions and Enforcement of Judgments § 175](#); duties of U.S. marshal with regard to postjudgment remedies under federal debt collection procedure statutes, regarding execution, see [Am. Jur. 2d, Executions and Enforcement of Judgments §§ 823, 824](#); service of federal court process by marshal or deputy marshal, see [Am. Jur. 2d, Process §§ 122, 123](#); duty to attend session of Court of Federal Claims when requested by chief judge of court, see [Am. Jur. 2d, Federal Courts § 1965](#)

Veterans Affairs, Department of, law enforcement on land under jurisdiction of, see [Am. Jur. 2d, Veterans and Veterans' Laws § 4](#)

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables I Refs.

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### Sheriffs, Police, and Constables

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#### I. In General

[Topic Summary](#) | [Correlation Table](#)

### Research References

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [1](#), [8](#), [15](#), [17](#), [22](#), [77](#)

#### A.L.R. Library

A.L.R. Index, Constables

A.L.R. Index, Deputies

A.L.R. Index, Marshals

A.L.R. Index, Police and Law Enforcement Officers

A.L.R. Index, Public Officers and Employees

A.L.R. Index, Sheriffs

West's A.L.R. Digest, [Sheriffs and Constables](#)  [1](#), [8](#), [15](#), [17](#), [22](#), [77](#)

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 1

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### Sheriffs, Police, and Constables

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#### I. In General

### § 1. Nature of offices, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  1, 8, 77

Sheriffs, deputy sheriffs, constables, and United States marshals, referred to jointly for purposes of this article as peace officers,<sup>1</sup> are generally classed as public officers.<sup>2</sup> They are ministerial officers;<sup>3</sup> distinguishably, when any such official or peace officer acts or attempts to act by virtue of a general authority, then such official is performing an executive function.<sup>4</sup>

#### Observation:

A statute may expressly exclude a sheriff or other peace officer from the definition of a "public officer" whether generally or for a limited purpose.<sup>5</sup>

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#### Footnotes

- <sup>1</sup> U.S. v. Krapf, 285 F.2d 647 (3d Cir. 1960) (United States marshal); State v. Graham, 203 N.W.2d 600 (Iowa 1973) (sheriff and deputies); In re Candidacy of Hansen, 118 Nev. 570, 52 P.3d 938 (2002) (constable).
- <sup>2</sup> Sears, Roebuck and Co. v. Braney, 265 N.J. Super. 362, 627 A.2d 662 (App. Div. 1993); Carpenter v. Barner, 797 S.W.2d 99 (Tex. App. Waco 1990), writ denied, (May 30, 1991) (constable as public officer).

- 3                   Cunningham v. Neagle, 135 U.S. 1, 10 S. Ct. 658, 34 L. Ed. 55 (1890); Ex parte Haralson, 853 So. 2d 928 (Ala. 2003); George v. County of San Luis Obispo, 78 Cal. App. 4th 1048, 93 Cal. Rptr. 2d 595 (2d Dist. 2000); Seay v. Cleveland, 270 Ga. 64, 508 S.E.2d 159 (1998); Sheriff of Baltimore City v. Abshire, 44 Md. App. 256, 408 A.2d 398 (1979).
- As to the classification of officers as ministerial, see Am. Jur. 2d, Public Officers and Employees[Westlaw®(r) Search Query].
- 4                   State v. Graham, 203 N.W.2d 600 (Iowa 1973).
- 5                   Bardi v. Warren County Sheriff's Dept., 194 A.D.2d 21, 603 N.Y.S.2d 90 (3d Dep't 1993).

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 2

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### Sheriffs, Police, and Constables

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#### I. In General

## § 2. Sheriff

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  1

The office of sheriff dates far back into English history,<sup>1</sup> and continues to carry with it all of its common-law duties and powers, except as modified by statute.<sup>2</sup> Thus, because at common law the sheriff was the chief law enforcement officer of the county,<sup>3</sup> the sheriff remains the chief law enforcement officer of the county<sup>4</sup> where this status has not been changed by the growth of local police departments.<sup>5</sup>

A sheriff is usually a county officer,<sup>6</sup> and the sheriff's office is an agency of the executive branch of government.<sup>7</sup> However, where the office and term of sheriff are created and fixed by the constitution, the sheriff is a public officer in the state government even though chosen by voters to serve in the county.<sup>8</sup> The sheriff is legally separate from the county itself<sup>9</sup> and is not an employee of the governing body of the county.<sup>10</sup>

The sheriff and deputies have also been said to be officers of the court,<sup>11</sup> with the duty to execute all writs returnable to court.<sup>12</sup>

The office of sheriff is generally an elective one,<sup>13</sup> and the office may be provided for in the state constitution.<sup>14</sup>

### Observation:

Since it is entirely natural that both the role of sheriffs and the importance of counties vary from one state to another, there is no inconsistency created by court decisions that declare sheriffs to be county officers in one state and not in another state.<sup>15</sup>

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Footnotes

- 1 Town of Stowe v. Lamoille County, 134 Vt. 402, 362 A.2d 159 (1976); Wisconsin Professional Police Ass'n (WPPA) v. Dane County, 106 Wis. 2d 303, 316 N.W.2d 656 (1982).
- 2 § 31.
- 3 Daniels v. Hanson, 115 N.H. 445, 342 A.2d 644 (1975).
- 4 Fitzpatrick v. Welch, 96 Idaho 280, 527 P.2d 313 (1974).
- 5 § 3.
- 6 Wallace v. Masterson, 345 F. Supp. 2d 917 (N.D. Ill. 2004) (applying Illinois law); Board of Com'rs of Dougherty County v. Saba, 278 Ga. 176, 598 S.E.2d 437 (2004).
- 7 Miner v. Novotny, 60 Md. App. 124, 481 A.2d 508 (1984), judgment aff'd, 304 Md. 164, 498 A.2d 269 (1985).
- 8 Baumgartner v. State, 21 Md. App. 251, 319 A.2d 592 (1974); Shusted v. Coyle, 139 N.J. Super. 314, 353 A.2d 562 (Law Div. 1976) (rejected on other grounds by Application of Burlington County Bd. of Chosen Freeholders, 99 N.J. 90, 491 A.2d 631 (1985)).
- 9 Wallace v. Masterson, 345 F. Supp. 2d 917 (N.D. Ill. 2004) (applying Illinois law).
- 10 Board of Com'rs of Dougherty County v. Saba, 278 Ga. 176, 598 S.E.2d 437 (2004).
- 11 Ritter v. Castellini, 173 N.J. Super. 509, 414 A.2d 614 (Law Div. 1980); Mazzo v. Monroe County, 58 A.D.2d 1017, 397 N.Y.S.2d 274 (4th Dep't 1977).
- 12 Arce v. Sybron Corp., 82 A.D.2d 308, 441 N.Y.S.2d 498 (2d Dep't 1981).
- 13 § 13.
- 14 Advisory Opinion to Governor re Sheriff And Judicial Vacancies Due To Resignations, 928 So. 2d 1218 (Fla. 2006); Board of Com'rs of Dougherty County v. Saba, 278 Ga. 176, 598 S.E.2d 437 (2004); Cyrus v. Calhoun County Sheriff, 85 Mich. App. 397, 271 N.W.2d 249 (1978); Daniels v. Hanson, 115 N.H. 445, 342 A.2d 644 (1975); Mazzo v. Monroe County, 58 A.D.2d 1017, 397 N.Y.S.2d 274 (4th Dep't 1977).
- 15 McMillian v. Monroe County, Ala., 520 U.S. 781, 117 S. Ct. 1734, 138 L. Ed. 2d 1 (1997).

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 3

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### Sheriffs, Police, and Constables


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#### I. In General

### § 3. Sheriff—As distinguished from police officers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  1

Although the sheriff has traditionally been the principal law enforcement officer of the county,<sup>1</sup> this is no longer always true today; as communities grew, local police departments were created,<sup>2</sup> resulting in a dichotomy between the daily functioning of police officers and sheriffs.<sup>3</sup> Particular state laws may define a "police officer" in such a way that sheriffs not considered police officers.<sup>4</sup>

In some states, the establishment of a police department resulted in an erosion of the office of sheriff.<sup>5</sup> However, even in such a state, where the applicable political subdivisions within a state have not established police departments, sheriffs, and their deputies are the local law enforcement officers and, as a primary part of their daily activities, ordinarily perform all of the law enforcement duties otherwise performed by police officers.<sup>6</sup> In other states, when a local police force is established, the power and authority of the sheriff to enforce the law and preserve the peace is not legally diminished but rather is concurrent;<sup>7</sup> both forces act cooperatively and in concert to achieve this desired purpose.<sup>8</sup> Ordinarily, the powers possessed by sheriffs at common law and retained in modern jurisprudence are concurrent with the powers now ordinarily exercised by police officers.<sup>9</sup> In other jurisdictions, a sheriff's department exercises police functions but is considered more than a police department.<sup>10</sup>

The relationships between superiors and subordinates also distinguish the operations of a sheriff's office from those of a police department. For example, the sheriff has broad discretion in appointing deputies and removing them, which differs from the employment rights usually applying to the members of a police force.<sup>11</sup> The two forces may also be distinguished in the liability for the acts of subordinates.<sup>12</sup>

Footnotes

- 1 § 2.
- 2 Daniels v. Hanson, 115 N.H. 445, 342 A.2d 644 (1975).
- 3 Soper v. Montgomery County, 294 Md. 331, 449 A.2d 1158 (1982).
- 4 Com. v. Marconi, 619 Pa. 401, 64 A.3d 1036 (2013) (vehicle code).
- 5 Sheriff of Baltimore City v. Abshire, 44 Md. App. 256, 408 A.2d 398 (1979).
- 6 Soper v. Montgomery County, 294 Md. 331, 449 A.2d 1158 (1982).
- 7 People v. Pina, 72 Cal. App. 3d Supp. 35, 140 Cal. Rptr. 270 (App. Dep't Super. Ct. 1977).
- 8 Wolfe v. Huff, 232 Ga. 44, 205 S.E.2d 254 (1974).
- 9 Soper v. Montgomery County, 294 Md. 331, 449 A.2d 1158 (1982).
- 10 Mazzo v. Monroe County, 58 A.D.2d 1017, 397 N.Y.S.2d 274 (4th Dep't 1977).
- 11 Mazzo v. Monroe County, 58 A.D.2d 1017, 397 N.Y.S.2d 274 (4th Dep't 1977).
- 12 §§ 56 to 62.

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 4

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### Sheriffs, Police, and Constables

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#### I. In General

### § 4. Constables

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  8

A constable generally is an officer whose duties are similar to those of sheriff although with fewer powers and a smaller jurisdiction.<sup>1</sup> A person enjoying the official status of constable should be considered a public officer.<sup>2</sup> Nonetheless, under a particular state law, constables are not employees of any municipal subdivision as police and sheriffs are; they are not paid a salary by any municipal subdivision but rather are independent contractors whose pay is on a per job basis.<sup>3</sup> Furthermore, constables may not be "sheriffs" or other "executive officers" statutorily prohibited from practicing law in the county for which they were elected.<sup>4</sup>

Constables designated to serve a court are officers of those courts,<sup>5</sup> and, when a constable executes writs of a court by designation of the judge, the constable is a ministerial officer of that court.<sup>6</sup>

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#### Footnotes

- 1 [In re Ingram](#), 356 So. 2d 618 (Ala. 1978) (duties of constable enumerated under statute); [State v. Thyfault](#), 121 N.J. Super. 487, 297 A.2d 873 (County Ct. 1972), *aff'd*, 126 N.J. Super. 459, 315 A.2d 424 (App. Div. 1974).
- 2 [Harriatt v. Lillo](#), 452 F. Supp. 421 (D.N.J. 1978) (although common-law arrangement for compensation by fees allowed by law still continues as to constables, constable is nonetheless a public officer, and since jurisdiction is throughout county, a county officer); [State v. Thyfault](#), 121 N.J. Super. 487, 297 A.2d 873 (County Ct. 1972), *aff'd*, 126 N.J. Super. 459, 315 A.2d 424 (App. Div. 1974) (constable is officer of state or political subdivision within meaning of a criminal statute defining offense of impersonating public officer).
- 3 [Com. v. Rodriguez](#), 2013 PA Super 302, 81 A.3d 103 (2013).
- 4 [Brewington v. State](#), 414 S.W.3d 126 (Tenn. Crim. App. 2013).

5                                    [Merritt v. Harris County, 775 S.W.2d 17 \(Tex. App. Houston 14th Dist. 1989\)](#), writ denied, (Nov. 29, 1989).  
6                                    [Harriatt v. Lillo, 452 F. Supp. 421 \(D.N.J. 1978\)](#).

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 5

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### Sheriffs, Police, and Constables

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#### I. In General

## § 5. United States marshals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  22

The office of United States marshal exists by virtue of statute.<sup>1</sup> A United States marshal is a member of the United States Marshals Service, which is a bureau within the Department of Justice under the authority and direction of the Attorney General.<sup>2</sup> Each marshal is appointed by the President to serve for a term of four years.<sup>3</sup> One marshal is appointed for each judicial district.<sup>4</sup>

In the discharge of duties, a United States marshal acts concurrently as an officer of the federal judiciary and as an executive officer.<sup>5</sup> As such, a United States marshal is a purely executive officer.<sup>6</sup> A deputy United States marshal is an employee, if not an officer, of the United States.<sup>7</sup>

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#### Footnotes

- 1 28 U.S.C.A. §§ 561 to 569.
- 2 28 U.S.C.A. § 561(a).
- 3 28 U.S.C.A. § 561(c), (d).
- 4 28 U.S.C.A. § 561(c).
- 5 *Cunningham v. Neagle*, 135 U.S. 1, 10 S. Ct. 658, 34 L. Ed. 55 (1890); *Farley v. U.S.*, 134 Ct. Cl. 672, 139 F. Supp. 757 (1956).
- 6 *Martin v. Tobin*, 451 F.2d 1335 (9th Cir. 1971).
- 7 *U.S. v. George*, 625 F.2d 1081 (3d Cir. 1980).

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 6

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### Sheriffs, Police, and Constables

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#### I. In General

## § 6. Deputies; bailiffs; undersheriffs

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### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  15, 17

The office of under- or deputy sheriff is a common-law office<sup>1</sup> unless a change is effected by the constitution or statute law of the state.<sup>2</sup> Under the law of some states, all peace officers employed in the county sheriff's office, at whatever level, are considered to be sheriff's deputies.<sup>3</sup>

A deputy sheriff holds an appointment as distinguished from an employment.<sup>4</sup> A deputy sheriff is a public officer under laws requiring that an appointment of a deputy by the sheriff must be approved by a judge, and that the deputy sheriff must take an oath of office, and conferring on the deputy sheriff powers and duties equal to those of the sheriff.<sup>5</sup> As a public officer, a deputy sheriff has been considered, both under the common and statutory law of one jurisdiction, as the agent of the sheriff, not as an "employee" of the county.<sup>6</sup> Unlike the sheriff, who is elected by the residents of a county, a deputy sheriff's relationship to the county is contractual.<sup>7</sup>

### Observation:

Deputy sheriffs may be deemed "public officers" with respect to the duties they perform, but may also be deemed "employees," due to their status as "employees at will." Each status may have different connotations with respect to tenure, compensation, and termination.<sup>8</sup> Alternately, a deputy sheriff for a county whose status is that of an "unclassified employee" appointed by the governor for a fixed term may be entitled to a greater panoply of rights than most other unclassified employees who served at will.<sup>9</sup>

Though viewed as public officers, appointed deputies have no statutorily prescribed term of office and serve solely at the pleasure of the sheriffs.<sup>10</sup> The sheriff has exclusive authority to control the provision of law enforcement services within the department and the terms and conditions of employment of deputy sheriffs so long as the sheriff complies with the legal requirements; county commissioners generally do not have authority to interfere with the terms and conditions of the deputy sheriffs' employment.<sup>11</sup> The sheriff is generally vested with legal authority to direct and regulate the conduct of deputies in reference to the discharge of their official duties.<sup>12</sup>

At common law, a deputy sheriff may execute all the ministerial parts of the office of sheriff;<sup>13</sup> however, the deputy is not the sheriff,<sup>14</sup> and distinctions remain between the nature of the offices, eligibility and qualification for the offices, and procedures for removal, all of which vary considerably from one jurisdiction to another.<sup>15</sup>

#### **Distinctions:**

The term "bailiff" is generally defined to include a sheriff's deputy or officer.<sup>16</sup>

For many purposes the two terms, deputy sheriff and undersheriff, are interchangeable<sup>17</sup> although the undersheriff may be said to be a special class of deputy in some jurisdictions.<sup>18</sup>

A special deputy is one commissioned to perform a specific limited function.<sup>19</sup>

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#### **Footnotes**

- 1 [Sikes v. Boone](#), 562 F. Supp. 74 (N.D. Fla. 1983), judgment [aff'd](#), 723 F.2d 918 (11th Cir. 1983); [Allen v. Fidelity and Deposit Co. of Maryland](#), 515 F. Supp. 1185 (D.S.C. 1981), [aff'd](#), 694 F.2d 716 (4th Cir. 1982).
- 2 [State v. Johnson](#), 123 S.C. 50, 115 S.E. 748 (1923).
- 3 [DiRuzza v. County of Tehama](#), 206 F.3d 1304 (9th Cir. 2000) (applying California law).
- 4 [Sikes v. Boone](#), 562 F. Supp. 74 (N.D. Fla. 1983), judgment [aff'd](#), 723 F.2d 918 (11th Cir. 1983); [Soileau v. Zerangue](#), 553 F. Supp. 845 (W.D. La. 1982); [Brevard County v. Miller](#), 452 So. 2d 1104 (Fla. 5th DCA 1984); [Pfister v. Niobrara County](#), 557 P.2d 735 (Wyo. 1976).
- 5 [Szell v. Lamar](#), 414 So. 2d 276 (Fla. 5th DCA 1982); [Boyer v. St. Amant](#), 364 So. 2d 1338 (La. Ct. App. 4th Cir. 1978), writ [denied](#), 365 So. 2d 1108 (La. 1978).
- 6 [Allen v. Fidelity and Deposit Co. of Maryland](#), 515 F. Supp. 1185 (D.S.C. 1981), [aff'd](#), 694 F.2d 716 (4th Cir. 1982).
- 7 [Thompson v. Hays](#), 867 N.E.2d 654 (Ind. Ct. App. 2007).

- 8                    [Schoonover v. Bonner County](#), 113 Idaho 916, 750 P.2d 95 (1988).
- 9                    [DeCecco v. State](#), 593 A.2d 1342 (R.I. 1991).
- 10                  § 19.
- 11                  [Linehan v. Rockingham County Com'rs](#), 151 N.H. 276, 855 A.2d 1271 (2004).
- 12                  [Keener v. Kimble](#), 170 Ga. App. 674, 317 S.E.2d 900 (1984) (rejecting claim of plaintiffs that county commissioners were liable in their official capacity for actions of the deputy sheriff on the basis of statute requiring county to provide supplies and equipment to the sheriff department).
- As to grounds for the discharge of deputy sheriffs, see §§ 23 to 30.
- 13                  § 33.
- 14                  [Degnan v. Curcio](#), 172 N.J. Super. 150, 411 A.2d 205 (App. Div. 1980).
- 15                  [Degnan v. Curcio](#), 172 N.J. Super. 150, 411 A.2d 205 (App. Div. 1980).
- 16                  [Massie v. Brown](#), 84 Wash. 2d 490, 527 P.2d 476 (1974).
- 17                  [Holly v. Preuss](#), 172 Mont. 422, 564 P.2d 1303 (1977).
- 18                  [Holly v. Preuss](#), 172 Mont. 422, 564 P.2d 1303 (1977).
- Where the position of undersheriff is a policymaking one, involving standing in the stead of the sheriff in the latter's absence, an employee's removal from the position of undersheriff, even if done on the basis of the employee's political associations with the former sheriff, does not violate the First Amendment. [Arteta v. County of Orange](#), 141 Fed. Appx. 3 (2d Cir. 2005) (applying New York law).
- 19                  [Bell v. Duffy](#), 111 Cal. App. 3d 643, 168 Cal. Rptr. 753 (4th Dist. 1980).

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables II Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### II. Eligibility and Qualifications

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  3, 10, 19

### A.L.R. Library

A.L.R. Index, Constables

A.L.R. Index, Deputies

A.L.R. Index, Marshals

A.L.R. Index, Police and Law Enforcement Officers

A.L.R. Index, Public Officers and Employees

A.L.R. Index, Sheriffs

West's A.L.R. Digest, [Sheriffs and Constables](#)  3, 10, 19

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 7

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### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### II. Eligibility and Qualifications

## § 7. Eligibility and qualifications, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  3, 10, 19

### A.L.R. Library

[Federal and State Constitutional Provisions and State Statutes as Prohibiting Employment Discrimination Based on Heterosexual Conduct or Relationship](#), 123 A.L.R.5th 411

[Validity, construction, and effect of state constitutional or statutory provision regarding nepotism in the public service](#), 11 A.L.R.4th 826

[Validity of age requirement for state public office](#), 90 A.L.R.3d 900

[Validity of requirement that candidate or public officer have been resident of governmental unit for specified period](#), 65 A.L.R.3d 1048

Since sheriffs and their deputies are classed as public officers,<sup>1</sup> they must, to hold office, possess the general qualifications required of other public officers within their jurisdiction, such as freedom from conviction of crime,<sup>2</sup> residency within the applicable governmental subdivision,<sup>3</sup> or compliance with provisions guarding against nepotism among the holders of public office.<sup>4</sup> Constables may also be subject to residency requirements.<sup>5</sup> The court has a duty to liberally construe the statutory limitations on the right to be an eligible candidate for sheriff in order to permit electors to choose from all qualified candidates.<sup>6</sup>

The constitutions and laws of the various states restrict the privilege of holding public office to those who are citizens of the state and of the United States.<sup>7</sup>

Where it is clear from the text and legislative history of a "home rule" constitutional provision, the legislature may provide for qualifications for the office of sheriff that exceed the requirements in another constitutional provision.<sup>8</sup>

Absent constitutional restriction, the legislature generally has the power to prescribe special qualifications necessary to render one eligible to the position of peace officer, including educational requirements,<sup>9</sup> minimum prior experience requirements,<sup>10</sup> a requirement that applicants for the position in question be members of the civil service,<sup>11</sup> freedom of any conviction of crime,<sup>12</sup> physical condition requirements<sup>13</sup> (although the status of an applicant as disabled is not alone sufficient to deny qualification where evidence indicates that the applicant has met the general physical ability requirements for all officers),<sup>14</sup> or age requirements.<sup>15</sup>

**Caution:**

Certain requirements, such as age or height requirements, may be considered discriminatory and violative of state or federal<sup>16</sup> fair employment practices laws. Conversely, a provision of the Age Discrimination in Employment Act that it is not unlawful for a local government to refuse to hire someone as a firefighter or law enforcement officer on the basis of age does not require state and local governments to impose age limits.<sup>17</sup>

**Observation:**

A statute may mandate licensing of law enforcement officers elected under the state's constitution, which licensing includes peace officers such as constables.<sup>18</sup>

Where a court appoints a special constable and is subject to potential liability, it is permissible for that court to set forth some requirements or qualifications for appointment so long as they are not unreasonable or arbitrary.<sup>19</sup>

A sheriff may require that deputies live in the county, and a statute that allows municipal police officers to live in an adjoining county is not applicable.<sup>20</sup>

A particular political affiliation is not an appropriate requirement for the position of deputy sheriff although it may be appropriate for the effective performance of a chief deputy position.<sup>21</sup>

Procedurally, a board of elections has the authority and duty to review a candidate's statutory qualifications for the office of sheriff whenever those qualifications are challenged in protest.<sup>22</sup>

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Footnotes

- 1                    §§ 2, 6.
- 2                    § 8.
- 3                    See, e.g., 28 U.S.C.A. § 561(c) (a United States marshal is required to reside within the district for which appointed, with some exceptions).
- 4                    State ex inf. Roberts v. Buckley, 533 S.W.2d 551 (Mo. 1976).  
As to nepotistic appointments as grounds for removal of a peace officer from office, see § 25.
- 5                    Chambliss v. State, 801 So. 2d 824 (Miss. Ct. App. 2001); In re Rodriguez, 587 Pa. 408, 900 A.2d 341 (2003).
- 6                    Wellington v. Mahoning Cty. Bd. of Elections, 117 Ohio St. 3d 143, 2008-Ohio-554, 882 N.E.2d 420 (2008).
- 7                    Am. Jur. 2d, Public Officers and Employees[Westlaw®(r) Search Query].
- 8                    Elbers v. Growe, 502 N.W.2d 810 (Minn. Ct. App. 1993).
- 9                    State v. Wenninger, 125 Ohio Misc. 2d 55, 2003-Ohio-5521, 798 N.E.2d 68 (C.P. 2003); Rogers v. Sontag, 1988 OK 94, 764 P.2d 883 (Okla. 1988).
- 10                  State ex rel. Wolfe v. Delaware Cty. Bd. of Elections, 88 Ohio St. 3d 182, 2000-Ohio-294, 724 N.E.2d 771 (2000) (prior supervisory experience).
- 11                  Green v. Cowlitz County Civil Service Commission, Cowlitz County, 19 Wash. App. 210, 577 P.2d 141 (Div. 2 1978).
- 12                  § 8.
- 13                  Elbers v. Growe, 502 N.W.2d 810 (Minn. Ct. App. 1993) (physical agility); Theodore v. Passaic County Sheriff's Dept., 92 N.J.A.R.2d (CSV) 398, 1992 WL 252336 (N.J. Admin. Ct. 1992) (failed physical exam); Connolly v. Suffolk County Dept. of Civil Service, 150 A.D.2d 373, 540 N.Y.S.2d 821 (2d Dep't 1989) (county police officer standard for physical fitness established by regulations relating to blood pressure); Tarrant County v. Van Sickle, 98 S.W.3d 358 (Tex. App. Fort Worth 2003).
- 14                  Rector v. North Carolina Sheriffs' Educ. and Training Standards Com'n, 103 N.C. App. 527, 406 S.E.2d 613 (1991).
- 15                  Arritt v. Grisell, 567 F.2d 1267 (4th Cir. 1977) (upholding age range for police officers); Ridaught v. Division of Florida Highway Patrol, 314 So. 2d 140 (Fla. 1975) (upholding maximum age of 35 for employees of the highway patrol).
- 16                  Am. Jur. 2d, Civil Rights §§ 374 to 378.
- 17                  Kopec v. City of Elmhurst, 193 F.3d 894 (7th Cir. 1999).
- 18                  Schwenke v. State, 960 S.W.2d 227 (Tex. App. Corpus Christi 1997).
- 19                  In re Application of Eddy, 65 Ohio App. 3d 194, 583 N.E.2d 374 (4th Dist. Washington County 1989).
- 20                  Myles v. Phillips, 87 A.D.2d 614, 448 N.Y.S.2d 31 (2d Dep't 1982), order aff'd, 57 N.Y.2d 692, 454 N.Y.S.2d 536, 440 N.E.2d 536 (1982).
- 21                  Hall v. Tollett, 128 F.3d 418, 1997 FED App. 0313P (6th Cir. 1997).
- 22                  State, ex rel. Shumate v. Portage Cty. Bd. of Elections, 64 Ohio St. 3d 12, 591 N.E.2d 1194 (1992).

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 8

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### II. Eligibility and Qualifications

## § 8. Criminal activity as disqualifying factor

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  3, 10, 19

### A.L.R. Library

[Validity, Construction, and Application of State Criminal Disenfranchisement Provisions](#), 10 A.L.R.6th 31

[Elections: effect of conviction under federal law, or law of another state or country, on right to vote or hold public office](#), 39 A.L.R.3d 303

[What is an infamous crime or one involving moral turpitude constituting disqualification to hold public office](#), 52 A.L.R.2d 1314

Absent constitutional restriction, the legislature may make freedom from conviction of a crime an eligibility prerequisite for a peace officer position, particularly with regard to the elective office of sheriff.<sup>1</sup> Under some state constitutions, the office of sheriff is subject to a requirement that a candidate for office must not have been convicted of an "infamous crime."<sup>2</sup>

Where no provision specific to peace officers is involved, to the extent that sheriffs and their deputies are classed as public officers,<sup>3</sup> they must, to hold office, possess the general qualifications required of other public officers within their jurisdiction, including freedom from conviction of crime.<sup>4</sup>

**Observation:**

Where a peace officer has previously been removed from office because of conviction of a crime,<sup>5</sup> that conviction will not bar a subsequent eligibility for office to the extent that the officer was pardoned with restoration of all civil and political rights.<sup>6</sup> However, mere expungement of a conviction neither alters the fact of conviction nor removes the disqualification for holding the office of sheriff.<sup>7</sup> A particular statute regarding the forfeiture of public employment was held not to bar a job applicant with an expunged conviction from holding a job with the sheriff's office where the applicant was not a public employee at the time of committing the underlying offense.<sup>8</sup>

A statute may mandate that candidates for sheriff's office disclose their prior convictions of crimes, including expunged records.<sup>9</sup>

**Practice Tip:**

Where there has been an arrest but no conviction for a crime, the evidence may still be sufficient to support a finding that a candidate for the office of sheriff has acted in a criminal manner, lacks the good moral character required for certification as a law enforcement officer, and thus is not qualified to be a sheriff. The appropriate evidentiary standard of criminal activity is a preponderance of the evidence, rather than the heightened clear and convincing standard of review applied to license revocation proceedings.<sup>10</sup>

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Footnotes

- 1 [Adams v. County of Sacramento](#), 235 Cal. App. 3d 872, 1 Cal. Rptr. 2d 138 (3d Dist. 1991), opinion modified, (Oct. 31, 1991); [State ex inf. Peach v. Goins](#), 575 S.W.2d 175 (Mo. 1978) (sheriff convicted of federal felonies).
- 2 [State v. Cassell](#), 2013 Ark. 221, 427 S.W.3d 663 (2013) (embezzlement or theft of interstate or foreign shipments by carrier is "infamous crime"); [Mauney v. State ex rel. Moore](#), 707 So. 2d 1093 (Miss. 1998) (sale of amphetamines is "infamous crime").
- 3 §§ 1 to 6.
- 4 [James v. Thompson](#), 392 So. 2d 1178 (Ala. 1981); [Wilson v. Montgomery County Election Bd.](#), 642 N.E.2d 258 (Ind. Ct. App. 1994) (disapproved of on other grounds by [Snyder v. King](#), 958 N.E.2d 764 (Ind. 2011)); [Woods v. Mills](#), 503 S.W.2d 706 (Ky. 1974).  
As to eligibility and qualifications of public officers, see Am. Jur. 2d, Public Officers and Employees[[Westlaw®\(r\) Search Query](#)].
- 5 § 26.

- 6                    [State v. Norris](#), 879 So. 2d 557 (Ala. 2003).  
7                    [Chamberlain v. Buhrman](#), 250 Kan. 277, 825 P.2d 168 (1992).  
8                    [Cicchetti v. Morris County Sheriff's Office](#), 194 N.J. 563, 947 A.2d 626 (2008).  
9                    [Chamberlain v. Buhrman](#), 250 Kan. 277, 825 P.2d 168 (1992).  
10                  [In re Jarman](#), 2015 SD 8, 860 N.W.2d 1 (S.D. 2015) (arrest for domestic incident causing injury to the victim,  
but no conviction).

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 9

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### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

## II. Eligibility and Qualifications

### § 9. Term limitations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  3, 10, 19

A state constitutional provision may also disqualify from another term of office any sheriff who has already served a prescribed number of terms of office.<sup>1</sup> Such a constitutional provision, prohibiting a sheriff from seeking reelection, is not an irrational exclusionary classification nor is it invidiously selective and discriminatory so as to violate the provisions of the Fourteenth Amendment to the United States Constitution.<sup>2</sup>

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#### Footnotes

<sup>1</sup> [State ex rel. Rushford v. Meador](#), 165 W. Va. 48, 267 S.E.2d 169 (1980).

<sup>2</sup> [English v. English](#), 539 S.W.2d 279 (Ky. 1976), commenting that a sheriff does not have a fundamental right to run for reelection as many times as the sheriff wishes.

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 10

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### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### II. Eligibility and Qualifications

## § 10. Holding multiple offices

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  3, 10, 19

The common law limits the right to hold more than one public office at the same time, and provisions in the constitutions and statutes of various states reiterate or extend the common-law rule.<sup>1</sup> However, where a state constitution states that no person may hold more than one "lucrative" office at the same time, a deputy has been held to be an employee rather than a public officer and, thus, not subject to the provision. Deputy sheriffs were found to have duties imposed by contract and are subject to the supervision and control of the sheriff in hiring, assignment of duties, and discipline or dismissal whereas a public officer has duties imposed by law and has powers of supervision and control.<sup>2</sup>

Some jurisdictions may permit a peace officer to hold another public office only if there is no remuneration for both positions;<sup>3</sup> in other cases, compensation for both offices appears not to be an issue.<sup>4</sup>

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### Footnotes

- <sup>1</sup> Am. Jur. 2d, Public Officers and Employees. [\[Westlaw®\(r\) Search Query\]](#)
- <sup>2</sup> [Thompson v. Hays](#), 867 N.E.2d 654 (Ind. Ct. App. 2007).
- <sup>3</sup> [Walden v. State](#), 426 So. 2d 515 (Ala. Crim. App. 1982) (duly deputized municipal police officer could perform the duties of a deputy sheriff); [Vinales v. State](#), 374 So. 2d 570 (Fla. 3d DCA 1979), judgment aff'd, 394 So. 2d 993 (Fla. 1981) (municipal police officer may legally serve as a temporary investigator for the state attorney, at least where the appointment was for a specific police investigation, carrying with it no remuneration or other accouterment of office of any kind).
- <sup>4</sup> [State ex rel. Landanger v. Madison County Bd. of Com'rs](#), 213 Neb. 33, 327 N.W.2d 93 (1982) (sheriff may, if so electing, act as jailer).  
As to provisions for compensation where the sheriff is performing the duties of another office, such as jailer, see § 41.

As to vacation of the office of a peace officer by acceptance of an incompatible office or one prohibited by statute or constitutional provision, see [§ 21](#).

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 11

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### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### II. Eligibility and Qualifications

## § 11. Time of determining eligibility

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  3, 10, 19

Eligibility is usually determined as of the date of either application for a position<sup>1</sup> or at the time of appointment to the position.<sup>2</sup> In the latter case, it is immaterial that the officer was qualified for the position at the time of application, or at the time when the position became available; the failure to remain qualified at the time of appointment precludes eligibility for the position.<sup>3</sup>

Where a statute requires that, to be eligible to run for the office of sheriff, a candidate must have been employed as a full-time peace or law enforcement officer within specified times preceding the election, it is a reasonable, nondiscriminatory restriction that does not severely burden a potential candidate and voter. A rational relationship exists between a state's interest in ensuring qualified sheriff candidates and such a requirement for purposes of a challenge under the First and Fourteenth Amendments.<sup>4</sup>

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### Footnotes

- <sup>1</sup> [Haverford Tp. v. Hawley](#), 97 Pa. Commw. 329, 509 A.2d 937 (1986) (declining to apply new, amended requirements to appointee who qualified under prior requirements).
- <sup>2</sup> [City of San Antonio v. Edwards](#), 974 S.W.2d 148 (Tex. App. San Antonio 1998).
- <sup>3</sup> [City of San Antonio v. Edwards](#), 974 S.W.2d 148 (Tex. App. San Antonio 1998).
- <sup>4</sup> [Estill v. Cool](#), 320 Fed. Appx. 309 (6th Cir. 2008) (reviewing Ohio statute).

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 12

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### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### II. Eligibility and Qualifications

## § 12. Supervisory experience

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  3, 10, 19

A statute may require that a candidate for the office of sheriff have a certain number of years of supervisory experience as a law enforcement officer.<sup>1</sup> A candidate may be found ineligible where the candidate's employment as a peace officer was never above a particular rank,<sup>2</sup> and the candidate's only supervisory experience was with a private security company.<sup>3</sup>

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### Footnotes

- 1 [State ex rel. Balas-Bratton v. Husted](#), 138 Ohio St. 3d 527, 2014-Ohio-1406, 8 N.E.3d 933 (2014) (qualified candidate has served as interim director of state public safety department, and director of safety for a city).
- 2 [Wellington v. Mahoning Cty. Bd. of Elections](#), 117 Ohio St. 3d 143, 2008-Ohio-554, 882 N.E.2d 420 (2008).
- 3 [State ex rel. Craig v. Scioto Cty. Bd. of Elections](#), 117 Ohio St. 3d 158, 2008-Ohio-706, 882 N.E.2d 435 (2008).

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables III Refs.

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### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### III. Title or Right to Office

[Topic Summary](#) | [Correlation Table](#)

## Research References

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West's Key Number Digest, [Sheriffs and Constables](#)  2 to 4, 9 to 11, 18 to 20

### A.L.R. Library

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A.L.R. Index, Deputies

A.L.R. Index, Marshals

A.L.R. Index, Police and Law Enforcement Officers

A.L.R. Index, Public Officers and Employees

A.L.R. Index, Sheriffs

West's A.L.R. Digest, [Sheriffs and Constables](#)  2 to 4, 9 to 11, 18 to 20

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 13

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### Sheriffs, Police, and Constables

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### III. Title or Right to Office

## § 13. Appointment or election

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  2, 9, 18

In many states, the offices of sheriff<sup>1</sup> and of constable<sup>2</sup> are elective offices. Deputies, however, are usually appointed to office rather than elected thereto.<sup>3</sup> The matter of filling by appointment vacancies in the office of sheriff<sup>4</sup> or of constable<sup>5</sup> and the appointment of special deputies,<sup>6</sup> or special constables,<sup>7</sup> are matters purely of local legislation.

As to the office of United States marshal, the federal statute governing the position provides that the President appoints, by and with the advice and consent of the Senate, a United States marshal for each judicial district.<sup>8</sup> Where the office of United States marshal is vacant, the district court for that district may appoint a marshal to serve until the vacancy is filled.<sup>9</sup> On the death of a United States marshal, the marshal's deputy or deputies perform the duties in the marshal's name until a successor is appointed and qualifies.<sup>10</sup> Separate provisions govern the appointment of United States marshals for Guam,<sup>11</sup> the Virgin Islands,<sup>12</sup> and the Northern Mariana Islands.<sup>13</sup>

A challenge to the denial of an order to place a person's name on the ballot for the office of sheriff must join the proper parties and must be preceded by the fulfillment of any statutory prerequisites, including a challenge to the rejection of an election petition where applicable.<sup>14</sup>

In some jurisdictions, a public officer, including a sheriff, must have a commission from the proper authority, usually the appointing power, as a warrant for performance of the duties of office.<sup>15</sup>

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### Footnotes

1           In re Advisory Opinion to Governor, 313 So. 2d 717 (Fla. 1975) (constitutional provision for electing sheriff  
does not apply to filling vacancies during term).

2           Bernard v. Johnson, 104 Mich. App. 37, 303 N.W.2d 924 (1981) (state constitution did not require that  
township constable be elected, and township board had discretion to determine that township did not need  
constable).

3           § 14.

4           McCraw v. Pate, 254 Ark. 357, 494 S.W.2d 94 (1973); Advisory Opinion to Governor re Sheriff And Judicial  
Vacancies Due To Resignations, 928 So. 2d 1218 (Fla. 2006); Ficano v. Lucas, 133 Mich. App. 268, 351  
N.W.2d 198 (1983) (county executive does not have power to fill vacancies in elective office of county  
sheriff); Cuomo v. Chemung County Legislature, 122 Misc. 2d 42, 469 N.Y.S.2d 868 (Sup 1983); Parker v.  
Nobles, 496 S.W.2d 921 (Tex. 1973); Miller v. Burley, 155 W. Va. 681, 187 S.E.2d 803 (1972).

          As to question of vacancies in office of the sheriff, generally, see § 21.

5           Grimble v. Avoyelles Parish Police Jury, 212 So. 2d 496 (La. Ct. App. 3d Cir. 1968).

6           § 6.

7           In re Application of Eddy, 65 Ohio App. 3d 194, 583 N.E.2d 374 (4th Dist. Washington County 1989).

8           28 U.S.C.A. § 561(a).

9           28 U.S.C.A. § 565.

10          28 U.S.C.A. § 566.

11          48 U.S.C.A. § 1424b(b).

12          48 U.S.C.A. § 1614(c).

13          48 U.S.C.A. § 1821(b)(3), (4).

14          State ex rel. Snider v. Stapleton, 65 Ohio St. 3d 40, 600 N.E.2d 240 (1992).

          As to election procedures and challenges generally, see Am. Jur. 2d, Elections.[Westlaw®(r) Search Query]

15          Am. Jur. 2d, Public Officers and Employees §§ 125, 126.

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 14

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### III. Title or Right to Office

## § 14. Appointment or election—Of deputy sheriffs

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  18

Because of the unique historical status of the deputy sheriff, a sheriff is generally deemed to have absolute control over the selection and retention of deputy sheriffs.<sup>1</sup> The sheriff generally is given broad authority in the selection and dismissal of deputies, both because the sheriff is responsible for the neglects and defaults of a deputy<sup>2</sup> and in order that law enforcement be centralized in the county.<sup>3</sup>

A sheriff, in appointing deputy sheriffs, is acting in connection with official duties.<sup>4</sup> A sheriff may have the common-law power to appoint a deputy and clothe the deputy with ministerial duties.<sup>5</sup> Statutes in derogation of the sheriff's common-law power are strictly construed.<sup>6</sup> Among the statutes limiting the sheriff's traditional discretion in hiring deputies are those establishing a civil service system for the appointment of deputies,<sup>7</sup> mandating compliance with collective-bargaining agreements,<sup>8</sup> or those empowering a county authority to determine the number of deputies a sheriff can have.<sup>9</sup> However, a statute giving county commissioners the authority to establish personnel policies and procedures for all nonelected personnel does not give the commissioners the ability to supersede the sheriff's power to appoint, promote, demote, or dismiss personnel.<sup>10</sup> Other statutes may permit such a county board to select the deputy sheriffs from among those recommended for appointment by the sheriff.<sup>11</sup>

### Observation:

In addition to appointing a deputy, a sheriff may seek voluntary cooperation from other law enforcement officers not within the sheriff's control and utilize them to assist deputies in the performance of their duties.<sup>12</sup>



## CUMULATIVE SUPPLEMENT

### Cases:

Volunteer reserve deputy was not required to meet requirements for special deputies in order to be exempt from statutory licensing requirements applicable to peace officers; in addition to having authority to appoint special deputies, a county sheriff also had the statutory authority to appoint reserve deputies. [NDCC §§ 11-15-02, 12-63-03\(2\)](#). [State v. Ngale, 2018 ND 172, 914 N.W.2d 495 \(N.D. 2018\)](#).

### [END OF SUPPLEMENT]

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### Footnotes

- 1 [Sikes v. Boone, 562 F. Supp. 74 \(N.D. Fla. 1983\)](#), judgment aff'd, [723 F.2d 918 \(11th Cir. 1983\)](#).
- 2 [§§ 56 to 62](#).
- 3 [Tanner v. McCall, 625 F.2d 1183 \(5th Cir. 1980\)](#); [Brevard County v. Miller, 452 So. 2d 1104 \(Fla. 5th DCA 1984\)](#); [Szell v. Lamar, 414 So. 2d 276 \(Fla. 5th DCA 1982\)](#).
- 4 [Snyder v. Cook, 688 P.2d 496 \(Utah 1984\)](#).
- 5 [State v. Jones, 41 N.C. App. 189, 254 S.E.2d 234 \(1979\)](#).
- 6 [Warren v. Walton, 231 Ga. 495, 202 S.E.2d 405 \(1973\)](#).
- 7 [Snyder v. Cook, 688 P.2d 496 \(Utah 1984\)](#); [Mozingo v. Barnhart, 169 W. Va. 31, 285 S.E.2d 497 \(1981\)](#).
- 8 [Washington County v. Washington County Deputy Sheriff's Ass'n, 192 Wis. 2d 728, 531 N.W.2d 468 \(Ct. App. 1995\)](#) (but finding no violation under facts presented).
- 9 [Butler v. Local 2033 Am. Federation of State, County and Municipal Emp., 186 Mont. 28, 606 P.2d 141 \(1980\)](#); [Cunningham v. Moore County, 604 S.W.2d 866 \(Tenn. Ct. App. 1980\)](#).
- 10 [Board of County Com'rs of County of Lincoln v. Nielander, 275 Kan. 257, 62 P.3d 247 \(2003\)](#).
- 11 [Rosander v. Board of County Com'rs of Butte County, 336 N.W.2d 160 \(S.D. 1983\)](#).
- 12 [Washington County v. Washington County Deputy Sheriff's Ass'n, 192 Wis. 2d 728, 531 N.W.2d 468 \(Ct. App. 1995\)](#) (action does not violate a collective-bargaining agreement).

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 15

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### III. Title or Right to Office

## § 15. Qualifying; taking oath; giving bond

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  3, 10, 19

Sheriffs and constables may be required to give bonds for the faithful performance of their official duties<sup>1</sup> and to take a prescribed oath before entering on the discharge of those duties.<sup>2</sup> Each United States marshal and deputy marshal must also take the oath of office provided for in the federal statute.<sup>3</sup>

Such requirements may, under various circumstances, be deemed mandatory,<sup>4</sup> while in other cases, the failure to comply with such requirements has not precluded a person from holding the status of a peace officer.<sup>5</sup>

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### Footnotes

- <sup>1</sup> [Muncy v. Keen](#), 619 S.W.2d 712 (Ky. Ct. App. 1981) (statute which permitted bond amount to be set or modified in discretion of officer approving bond); [Brown v. Edwards](#), 321 So. 2d 394 (La. Ct. App. 1st Cir. 1975) (statute provided that the sheriff is ex-officio collector of taxes; moreover, that sheriff must give separate bonds as required by law, for the faithful performance of duties in each capacity).  
As to liability on official bond, see §§ [69](#) to [88](#).  
As to the technical prerequisites to entering public office or employment, see Am. Jur. 2d, Public Officers and Employees[[Westlaw®\(r\) Search Query](#)].
- <sup>2</sup> [James v. Thompson](#), 392 So. 2d 1178 (Ala. 1981).
- <sup>3</sup> 28 U.S.C.A. § 563.
- <sup>4</sup> [Holloway v. State](#), 342 So. 2d 966 (Fla. 1977); [State ex rel. Dingess v. Scaggs](#), 156 W. Va. 588, 195 S.E.2d 724 (1973).
- <sup>5</sup> [Walden v. State](#), 426 So. 2d 515 (Ala. Crim. App. 1982).

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## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 16

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### III. Title or Right to Office

## § 16. De facto peace officers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  4, 11, 20

A person acting as a deputy under appointment by a sheriff or marshal may be a de facto officer even though such person has not qualified as prescribed by law.<sup>1</sup> Generally, all that is required to make an officer de facto is that the officer claim the office, be in possession of it, and perform its duties under the color of election or appointment.<sup>2</sup> However, a jurisdiction may further require a showing that an innocent party detrimentally relied on the actions of the person acting as a deputy sheriff to hold such person a de facto deputy sheriff.<sup>3</sup> Where an elected peace officer ceases to qualify for the office but does not automatically forfeit the office and its accompanying powers, then absent proceedings to compel the officer to vacate the office, the peace officer operates under color of law as a de facto official.<sup>4</sup>

### Caution:

A de facto officer is a "law enforcement officer" for purposes of a statute providing that a battery of a police officer which results in bodily injury raises the offense to a certain class of felony; thus, any battery upon such an officer causing bodily injury increases the offense to that class of felony.<sup>5</sup>

### Practice Tip:

Those involved in an arrestee's capture could be considered de facto deputies, despite their potential lack of compliance with the formalities required by statute for appointment, arising from the absence of proof of a bond filing. Any lack of compliance does not render the arrestee's stop, seizure, detention, or arrest unlawful. The deputies had all been employed with the sheriff's office for a significant amount of time, ranging from eight to 28 years, all deputies indicated that they were bonded and had taken an oath for every sheriff for whom they had worked, and, at the time of arrest, the deputies were performing duties consistent with their appointments and were identifiable to the arrestee as deputy sheriffs who had authority.<sup>6</sup>

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#### Footnotes

- 1 [Wright v. U.S.](#), 158 U.S. 232, 15 S. Ct. 819, 39 L. Ed. 963 (1895); [Malone v. State](#), 406 So. 2d 1060 (Ala. Crim. App. 1981), writ denied, 406 So. 2d 1066 (Ala. 1981); [Carty v. State](#), 421 N.E.2d 1151 (Ind. Ct. App. 1981).  
As to de facto public officers, see Am. Jur. 2d, Public Officers and Employees[[Westlaw®\(r\) Search Query](#)].
- 2 [Carty v. State](#), 421 N.E.2d 1151 (Ind. Ct. App. 1981).
- 3 [Holloway v. State](#), 342 So. 2d 966 (Fla. 1977).
- 4 [Chambliss v. State](#), 801 So. 2d 824 (Miss. Ct. App. 2001) (constable who no longer met residency requirements continued to operate under color of law and could validly perform arrests).
- 5 [Carty v. State](#), 421 N.E.2d 1151 (Ind. Ct. App. 1981).
- 6 [State v. Griffin](#), 413 S.C. 258, 776 S.E.2d 87 (Ct. App. 2015).

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